

Assembly Bill No. 1986

CHAPTER 88

An act to amend Section 6240 of the Probate Code, relating to wills.

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1986, Silva. Statutory wills: form.

Existing law requires, for a statutory will to be properly executed that the testator complete the appropriate blanks and sign the will and that 2 witnesses observe the testator's signing and each witness sign his or her name in the presence of the testator. However, the form used for a statutory will also requires the witnesses to sign in each other's presence.

This bill would delete this latter requirement from the form. The bill would add to the form a notice that the notarization would not fulfill the witness requirement. The bill would additionally change the form to account for a guardianship of a child born after the date the will is executed. This bill would also make other technical and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 6240 of the Probate Code is amended to read:
6240. The following is the California Statutory Will form:

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.

1. *What happens if I die without a Will?* If you die without a Will, what you own (your "assets") in your name alone will be divided among your spouse, domestic partner, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. *What can a Will do for me?* In a Will you may designate who will receive your assets at your death. You may designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a "guardian") to raise your children who are under age 18.

You may designate someone (called a “custodian”) to manage assets for your children until they reach any age from 18 to 25.

3. *Does a Will avoid probate?* No. With or without a Will, assets in your name alone usually go through the court probate process. The court’s first job is to determine if your Will is valid.

4. *What is community property?* Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse’s one-half of community property.

5. *Does my Will give away all of my assets?* Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse, domestic partner, or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these types of “nonprobate” assets pass at your death.

6. *Are there different kinds of Wills?* Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this Statutory Will or if you do not understand this form.

7. *Who may use this Will?* This Will is based on California law. It is designed only for California residents. You may use this form if you are single, married, a member of a domestic partnership, or divorced. You must be age 18 or older and of sound mind.

8. *Are there any reasons why I should NOT use this Statutory Will?* Yes. This is a simple Will. It is not designed to reduce death taxes or other taxes. Talk to a lawyer to do tax planning, especially if (i) your assets will be worth more than \$600,000 or the current amount excluded from estate tax under federal law at your death, (ii) you own business-related assets, (iii) you want to create a trust fund for your children’s education or other purposes, (iv) you own assets in some other state, (v) you want to disinherit your spouse, domestic partner, or descendants, or (vi) you have valuable interests in pension or profit-sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have stepchildren or foster children whom you have not adopted.

9. *May I add or cross out any words on this Will?* No. If you do, the Will may be invalid or the court may ignore the crossed out or added words. You may only fill in the blanks. You may amend this Will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. *May I change my Will?* Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can give away or sell

your assets before your death. Your Will only acts on what you own at death.

11. *Where should I keep my Will?* After you and the witnesses sign the Will, keep your Will in your safe deposit box or other safe place. You should tell trusted family members where your Will is kept.

12. *When should I change my Will?* You should make and sign a new Will if you marry, divorce, or terminate your domestic partnership after you sign this Will. Divorce, annulment, or termination of a domestic partnership automatically cancels all property stated to pass to a former husband, wife, or domestic partner under this Will, and revokes the designation of a former spouse or domestic partner as executor, custodian, or guardian. You should sign a new Will when you have more children, or if your spouse or a child dies, or a domestic partner dies or marries. You may want to change your Will if there is a large change in the value of your assets. You may also want to change your Will if you enter a domestic partnership or your domestic partnership has been terminated after you sign this Will.

13. *What can I do if I do not understand something in this Will?* If there is anything in this Will you do not understand, ask a lawyer to explain it to you.

14. *What is an executor?* An “executor” is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or trust company.

15. *Should I require a bond?* You may require that an executor post a “bond.” A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor. The cost of the bond is paid from the estate’s assets.

16. *What is a guardian?* Do I need to designate one? If you have children under age 18, you should designate a guardian of their “persons” to raise them.

17. *What is a custodian?* Do I need to designate one? A “custodian” is a person you may designate to manage assets for someone (including a child) who is under the age of 25 and who receives assets under your Will. The custodian manages the assets and pays as much as the custodian determines is proper for health, support, maintenance, and education. The custodian delivers what is left to the person when the person reaches the age you choose (from 18 to 25). No bond is required of a custodian.

18. *Should I ask people if they are willing to serve before I designate them as executor, guardian, or custodian?* Probably yes. Some people and banks and trust companies may not consent to serve or may not be qualified to act.

19. *What happens if I make a gift in this Will to someone and that person dies before I do?* A person must survive you by 120 hours to take a gift under this Will. If that person does not, then the gift fails and goes with the rest of your assets. If the person who does not survive you is a relative of yours or your spouse, then certain assets may go to the relative’s descendants.

20. *What is a trust?* There are many kinds of trusts, including trusts created by Wills (called “testamentary trusts”) and trusts created during your lifetime (called “revocable living trusts”). Both kinds of trusts are long-term arrangements in which a manager (called a “trustee”) invests and manages assets for someone (called a “beneficiary”) on the terms you specify. Trusts are too complicated to be used in this Statutory Will. You should see a lawyer if you want to create a trust.

21. *What is a domestic partner?* You have a domestic partner if you have met certain legal requirements and filed a form entitled “Declaration of Domestic Partnership” with the Secretary of State. Notwithstanding Section 299.6 of the Family Code, if you have not filed a Declaration of Domestic Partnership with the Secretary of State, you do not meet the required definition and should not use the section of the Statutory Will form that refers to domestic partners even if you have registered your domestic partnership with another governmental entity. If you are unsure if you have a domestic partner or if your domestic partnership meets the required definition, please contact the Secretary of State’s office.

INSTRUCTIONS

1. *READ THE WILL.* Read the whole Will first. If you do not understand something, ask a lawyer to explain it to you.

2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the instructions in the form carefully. Do not add any words to the Will (except for filling in blanks) or cross out any words.

3. *DATE AND SIGN THE WILL AND HAVE TWO WITNESSES SIGN IT.* Date and sign the Will and have two witnesses sign it. You and the witnesses should read and follow the Notice to Witnesses found at the end of this Will.

*You do not need to have this document notarized. Notarization will not fulfill the witness requirement.

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